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SENATE BILL 30

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Carroll H. Leavell

AN ACT

**RELATING TO WORKERS' COMPENSATION; PROVIDING FOR EMPLOYMENT
ELIGIBILITY FOR FORMER OMBUDSMEN; PROVIDING FOR AN INCREASE IN
THE WORKERS' COMPENSATION ADMINISTRATION DIRECTOR'S SALARY;
MAKING AN APPROPRIATION.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 52-5-1.4 NMSA 1978 (being Laws 1990
(2nd S.S.), Chapter 2, Section 64) is amended to read:**

"52-5-1.4. OMBUDSMAN PROGRAM --

**A. The director shall establish an ombudsman
program to assist injured or disabled workers, persons claiming
death benefits, employers and other persons in protecting their
rights and obtaining information available under workers'
compensation and occupational disease disablement laws.**

B. An ombudsman shall meet with or otherwise

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1 provide information to injured or disabled workers, investigate
2 complaints and communicate with employers, insurance carriers
3 and health care providers on behalf of injured or disabled
4 workers. An ombudsman shall otherwise assist unrepresented
5 claimants, employers and other parties to enable them to
6 protect their rights in the workers' compensation and
7 occupational disease disablement system. At least one
8 specially qualified employee in each location that the
9 administration has an office shall be designated by the
10 director as an ombudsman, and duties described in this section
11 shall be that person's primary responsibility. The director
12 may designate additional ombudsmen and assign them as he deems
13 appropriate.

14 C. An ombudsman need not be an attorney but shall
15 demonstrate familiarity with workers' compensation and
16 occupational disease disablement laws. Any person employed as
17 an ombudsman shall be ineligible to hold any other position in
18 the administration for at least [~~five years~~] one year from the
19 date of leaving the position of ombudsman.

20 D. An ombudsman shall not be an advocate for any
21 person and shall restrict his activities to providing
22 information and facilitating communication. An ombudsman shall
23 not assist a claimant, employer or any other person in any
24 proceeding beyond the informal conference held pursuant to
25 Section 52-5-5 NMSA 1978.

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1 E. Each employer shall notify his employees of the
2 ombudsman service in a manner prescribed by the director.
3 [~~Such~~] The notice shall include the posting of a notice in one
4 or more conspicuous places. The director shall also describe
5 clearly the availability of the ombudsmen on the first report
6 of accident form required under Section 52-1-58 NMSA 1978, or
7 the first report of disablement form required under Section
8 52-3-51 NMSA 1978. "

9 Section 2. Section 52-5-2 NMSA 1978 (being Laws 1986,
10 Chapter 22, Section 28, as amended) is amended to read:

11 "52-5-2. DIRECTOR--APPOINTMENT--EMPLOYEES--WORKERS'
12 COMPENSATION JUDGES.--

13 A. The workers' compensation administration shall
14 be in the charge of a director, who shall be appointed by the
15 governor for a term of five years with the consent of the
16 senate. The appointed director shall serve and have the
17 authority of that office during the period of time prior to
18 final action by the senate confirming or rejecting the
19 appointment. The appointment shall be made on the basis of
20 administrative ability, education, training and experience
21 relevant to the duties of the director. Upon the expiration of
22 the term, the director shall continue to serve until the
23 successor is appointed and qualified. Before entering upon the
24 duties, the director shall subscribe to an oath to faithfully
25 discharge the duties of the office. The director shall devote

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1 full time to the duties of the office. The director's salary
2 shall be equal to ninety-five percent of that of [~~district~~
3 court of appeals judges.

4 B. The director shall appoint necessary workers'
5 compensation judges. Workers' compensation judges shall not be
6 subject to the provisions of the Personnel Act except as
7 provided by Subsection C of this section. Workers'
8 compensation judges shall be appointed for an initial term of
9 one year and shall be compensated at a rate equal to ninety
10 percent of that of district court judges. Ninety days prior to
11 the expiration of a workers' compensation judge's term, the
12 director shall review his performance. If approved by the
13 director, the workers' compensation judge may be reappointed to
14 a subsequent five-year term.

15 C. Workers' compensation judges shall be lawyers
16 licensed to practice law in this state and shall have a minimum
17 five years' experience as a practicing lawyer. They shall
18 devote their entire time to their duties and shall not engage
19 in the private practice of law and shall not hold any other
20 position of trust or profit or engage in any occupation or
21 business interfering with or inconsistent with the discharge of
22 their duties as workers' compensation judges. A workers'
23 compensation judge shall be required to conform to all canons
24 of the code of judicial conduct as adopted by the supreme
25 court, except canon 21-900 of that code. Violation of those

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1 canons shall be exclusive grounds for dismissal prior to the
2 expiration of his term. Any complaints against a workers'
3 compensation judge shall be filed with the state personnel
4 board, which shall report its findings to the director.

5 D. Workers' compensation judges shall have the same
6 immunity from liability for their adjudicatory actions as
7 district court judges. "

8 Section 3. APPROPRIATION. --Four thousand four hundred
9 forty-six dollars (\$4,446) is appropriated from the workers'
10 compensation administration fund to the workers' compensation
11 administration for expenditure in fiscal year 2005 to provide a
12 salary increase for the director of the workers' compensation
13 administration effective the first pay period after July 1,
14 2004. Any unexpended or unencumbered balance remaining at the
15 end of fiscal year 2005 shall revert to the workers'
16 compensation administration fund.

17 Section 4. EFFECTIVE DATE. --The effective date of the
18 provisions of this act is July 1, 2004.